



February 13, 2009

HOUSE BILL No. 1578

DIGEST OF HB 1578 (Updated February 11, 2009 3:39 pm - DI 107)

Citations Affected: IC 34-6; IC 34-26; IC 35-44; noncode.

Synopsis: GPS monitoring and restraining orders. Permits a court to require a person who is subject to an order of protection to wear a GPS tracking device if the court finds that the person violated an order for protection. Provides that if a court orders GPS tracking, the court shall require the use of a GPS tracking device with certain notification capabilities. Requires the judicial conference of Indiana to provide an annual report to the general assembly until 2013 concerning GPS tracking.

Effective: July 1, 2009.

Dembowski, Lawson L, Koch, Pond

January 16, 2009, read first time and referred to Committee on Judiciary.
February 12, 2009, amended, reported — Do Pass.

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February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1578

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-148.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 148.5. "Victim notification**
4 **capabilities"** means, with respect to a GPS tracking device, the
5 **ability of the device to do the following:**

6 (1) **Immediately notify law enforcement or other supervisory**
7 **personnel if the device enters a forbidden area.**

8 (2) **Notify the victim in real time or near real time if the device**
9 **enters a forbidden area.**

10 (3) **Allow a law enforcement officer or other supervisory**
11 **officer to contact the offender through a cellular telephone**
12 **implanted in the GPS tracking device.**

13 (4) **Activate a loud alarm to warn others of the device's**
14 **presence in a forbidden zone.**

15 . SECTION 2. IC 34-26-5-9, AS AMENDED BY P.L.68-2005,
16 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2009]: Sec. 9. (a) If it appears from a petition for an order for

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1 protection or from a petition to modify an order for protection that
 2 domestic or family violence has occurred or that a modification of an
 3 order for protection is required, a court may:

- 4 (1) without notice or hearing, immediately issue an order for
 5 protection ex parte or modify an order for protection ex parte; or
 6 (2) upon notice and after a hearing, whether or not a respondent
 7 appears, issue or modify an order for protection.

8 (b) A court may grant the following relief without notice and
 9 hearing in an ex parte order for protection or in an ex parte order for
 10 protection modification:

11 (1) Enjoin a respondent from threatening to commit or
 12 committing acts of domestic or family violence against a
 13 petitioner and each designated family or household member.

14 (2) Prohibit a respondent from harassing, annoying, telephoning,
 15 contacting, or directly or indirectly communicating with a
 16 petitioner.

17 (3) Remove and exclude a respondent from the residence of a
 18 petitioner, regardless of ownership of the residence.

19 (4) Order a respondent to stay away from the residence, school, or
 20 place of employment of a petitioner or a specified place
 21 frequented by a petitioner and each designated family or
 22 household member.

23 (5) Order possession and use of the residence, an automobile, and
 24 other essential personal effects, regardless of the ownership of the
 25 residence, automobile, and essential personal effects. If
 26 possession is ordered under this subdivision, the court may direct
 27 a law enforcement officer to accompany a petitioner to the
 28 residence of the parties to:

29 (A) ensure that a petitioner is safely restored to possession of
 30 the residence, automobile, and other essential personal effects;
 31 or

32 (B) supervise a petitioner's or respondent's removal of personal
 33 belongings.

34 (6) Order other relief necessary to provide for the safety and
 35 welfare of a petitioner and each designated family or household
 36 member.

37 (c) A court may grant the following relief after notice and a hearing,
 38 whether or not a respondent appears, in an order for protection or in a
 39 modification of an order for protection:

40 (1) Grant the relief under subsection (b).

41 (2) Specify arrangements for parenting time of a minor child by
 42 a respondent and:

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- 1 (A) require supervision by a third party; or
 2 (B) deny parenting time;
 3 if necessary to protect the safety of a petitioner or child.
 4 (3) Order a respondent to:
 5 (A) pay attorney's fees;
 6 (B) pay rent or make payment on a mortgage on a petitioner's
 7 residence;
 8 (C) if the respondent is found to have a duty of support, pay
 9 for the support of a petitioner and each minor child;
 10 (D) reimburse a petitioner or other person for expenses related
 11 to the domestic or family violence, including:
 12 (i) medical expenses;
 13 (ii) counseling;
 14 (iii) shelter; and
 15 (iv) repair or replacement of damaged property; ~~or~~
 16 **(E) pay the costs and expenses incurred in connection with**
 17 **the use of a GPS tracking device under subsection (i); or**
 18 ~~(E)~~ **(F) pay the costs and fees incurred by a petitioner in**
 19 **bringing the action.**
 20 (4) Prohibit a respondent from using or possessing a firearm,
 21 ammunition, or a deadly weapon specified by the court, and direct
 22 the respondent to surrender to a specified law enforcement agency
 23 the firearm, ammunition, or deadly weapon for the duration of the
 24 order for protection unless another date is ordered by the court.
 25 An order issued under subdivision (4) does not apply to a person who
 26 is exempt under 18 U.S.C. 925.
 27 (d) The court shall:
 28 (1) cause the order for protection to be delivered to the county
 29 sheriff for service;
 30 (2) make reasonable efforts to ensure that the order for protection
 31 is understood by a petitioner and a respondent if present;
 32 (3) transmit, by the end of the same business day on which the
 33 order for protection is issued, a copy of the order for protection to
 34 each local law enforcement agency designated by a petitioner;
 35 (4) transmit a copy of the order to the clerk for processing under
 36 IC 5-2-9; and
 37 (5) notify the state police department of the order if the order and
 38 the parties meet the criteria under 18 U.S.C. 922(g)(8).
 39 (e) An order for protection issued ex parte or upon notice and a
 40 hearing, or a modification of an order for protection issued ex parte or
 41 upon notice and a hearing, is effective for two (2) years after the date
 42 of issuance unless another date is ordered by the court. The sheriff of

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each county shall provide expedited service for an order for protection.

(f) A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons:

(1) in the control, ownership, or possession of a respondent; or

(2) in the control or possession of another person on behalf of a respondent;

for the duration of the order for protection unless another date is ordered by the court.

(g) An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

(h) The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

(i) Upon a finding of a violation of an order for protection, the court may:

(1) require a respondent to wear a GPS tracking device; and

(2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found.

If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities (as defined in IC 35-41-1-28.5).

(j) The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (i).

SECTION 3. IC 35-44-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) A person, except as provided in subsection (b), who intentionally flees from lawful detention commits escape, a Class C felony. However, the offense is a Class B felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

(b) A person who knowingly or intentionally violates a home

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1 detention order or intentionally removes an electronic monitoring
2 device **or GPS tracking device** commits escape, a Class D felony.

3 (c) A person who knowingly or intentionally fails to return to lawful
4 detention following temporary leave granted for a specified purpose or
5 limited period commits failure to return to lawful detention, a Class D
6 felony. However, the offense is a Class C felony if, while committing
7 it, the person draws or uses a deadly weapon or inflicts bodily injury on
8 another person.

9 SECTION 4. [EFFECTIVE JULY 1, 2009] (a) **The judicial**
10 **conference of Indiana shall submit to the general assembly before**
11 **January 15 of each year a report in an electronic format under**
12 **IC 5-14-6 concerning:**

13 (1) **the frequency with which GPS tracking was ordered by a**
14 **court as part of an order for protection;**

15 (2) **the costs associated with GPS tracking;**

16 (3) **the circumstances under which GPS tracking was ordered;**

17 (4) **whether GPS tracking with victim notification capabilities**
18 **was:**

19 (A) **available; and**

20 (B) **ordered by a court; and**

21 (5) **any other relevant information relating to electronic**
22 **monitoring.**

23 **The judicial conference may include the information as a part of its**
24 **annual report under IC 11-13-1-9 or as a separate report.**

25 (b) **This SECTION expires January 30, 2013.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1578, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 26, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-148.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 148.5. "Victim notification capabilities" means, with respect to a GPS tracking device, the ability of the device to do the following:**

- (1) Immediately notify law enforcement or other supervisory personnel if the device enters a forbidden area.**
- (2) Notify the victim in real time or near real time if the device enters a forbidden area.**
- (3) Allow a law enforcement officer or other supervisory officer to contact the offender through a cellular telephone implanted in the GPS tracking device.**
- (4) Activate a loud alarm to warn others of the device's presence in a forbidden zone."**

Page 5, line 3, delete "require the respondent to wear a GPS tracking".

Page 5, delete lines 4 through 10.

Page 6, line 11, delete "(b)(2);" and insert "(i)".

Page 7, between lines 17 and 18, begin a new paragraph and insert:

"(i) Upon a finding of a violation of an order for protection, the court may:

- (1) require a respondent to wear a GPS tracking device; and**
- (2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found.**

If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities (as defined in IC 35-41-1-28.5).

(j) The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under subsection (i)."

Page 7, delete lines 18 through 42.

Delete pages 8 through 12.

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Page 13, delete lines 1 through 41.

Page 14, line 20, delete "as:" and insert "**as part of an order for protection;**".

Page 14, delete lines 21 through 23.

Page 14, delete lines 34 through 42.

Page 15, delete lines 1 through 4.

Page 15, delete "(c)" and insert "**(b)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1578 as introduced.)

PRYOR, Chair

Committee Vote: yeas 11, nays 0.

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